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No. 94-386

In the Supreme Court of the United States

OCTOBER TERM, 1994

VSA, INC., D/B/A VSA CAROLINAS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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27 pp

QUESTION PRESENTED

Whether the National Labor Relations Board reasonably concluded that a union's pre-election offer to waive initiation fees did not interfere with the certification election, since the offer was extended to all employees and was not conditioned on the employees' pre-election support for the union or their individual votes in the election.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-26) is reported at 24 F.3d 588. The decision and order of the National Labor Relations Board (Pet. App. 29-36) are reported at 309 N.L.R.B. No. 188. The Board's underlying decision and certification of representative (Pet. App. 27-28), adopting the regional director's report, are unreported. The regional director's report on petitioner's objections to the certification election is reprinted in the appendix to this brief (App., *infra*, 1a-11a).

JURISDICTION

The judgment of the court of appeals was entered on May 12, 1994. A petition for rehearing was denied on June 7, 1994. Pet. App. 37. The petition for a writ of certiorari was filed on August 31, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner distributes food products to retail vendors from a facility in Greensboro, North Carolina. Pet. App. 30. On October 4, 1991, Chauffeurs, Teamsters, and Helpers Local Union No. 391 (the Union) filed a petition with the regional office of the National Labor Relations Board (the Board) for a representation election in a unit consisting of all drivers employed in the transportation division of petitioner's Greensboro facility. On November 22, 1991, pursuant to a stipulated election agreement, the Board conducted a secret-ballot election among the unit employees, which the Union won by a vote of 11 to 8. App., *infra*, 1a-2a.

Petitioner filed objections to conduct affecting the results of the election with the Board's regional director. Petitioner alleged that union representatives conditioned a waiver of member initiation fees upon a showing of pre-election support for the Union, thereby improperly inducing employees to vote for the Union. App., *infra*, 3a. In support of its objection, petitioner presented the statements of three witnesses. Two witnesses, both employees, stated that, before the election, Union business agent R. W. Brown told employees at a union meeting that, since the employees were just beginning to organize and did not already have a union, initiation fees would be waived for all employees in the unit. Brown also told the employees, however, that if the Union were rejected in the pending election and the

employees eventually succeeded in securing another election later, there would be an initiation fee if the Union then became their bargaining representative. A third employee stated that, at a later pre-election meeting, Brown essentially repeated that statement. *Id.* at 3a-4a.

The regional director issued a report recommending that petitioner's objection be overruled. App., *infra*, 1a-11a. The regional director stated that, under this Court's decision in *NLRB* v. *Savair Mfg. Co.*, 414 U.S. 270 (1973), and the Board's decision in *Deming Division, Crane Co.*, 225 N.L.R.B. 657 (1976), objectionable conduct occurs "when the Union waives initiation fees to those who join[] before the election but not to those who [seek] to join the Union after the Union [wins] the election." App., *infra*, 5a. The regional director found that Brown's comments "did not state either implicitly or explicitly that anyone would be required to pay initiation fees after the union won the election." *Ibid.* The regional director also noted that a leaflet mailed by the Union to the employees stated clearly that there would be no initiation fees and did not distinguish between those signing cards before the election and those signing afterwards. See *ibid.*; *id.* at 10a-11a. In those circumstances, the regional director concluded, the Union had not engaged in conduct proscribed by *Savair*. *Id.* at 5a-6a.

Petitioner filed exceptions to the regional director's determination, but the Board adopted the regional director's disposition of petitioner's objection to the election and certified the Union as the exclusive bargaining representative of petitioner's bargaining unit. Pet. App. 27-28. In rejecting petitioner's exception to the regional director's failure to hold an evidentiary hearing on petitioner's objection, the Board accepted as true the

facts proffered by petitioner, but nevertheless determined that petitioner had failed to meet its burden of presenting a *prima facie* case of objectionable election interference. In addition, the Board stated that, because "none of [petitioner's] objections raise[d] substantial or material factual issues, no evidentiary hearing [was] warranted." *Id.* at 27 n.1.

When petitioner subsequently refused to bargain, the Union filed an unfair labor practice charge. The Board's General Counsel issued a complaint alleging that petitioner's refusal violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act), 29 U.S.C. 158(a)(1) and (5). Finding that all issues relevant to the unfair labor practice charge were, or could have been, litigated in the representation proceeding, the Board granted summary judgment decreeing that petitioner had violated Section 8(a)(1) and (5) of the Act, and it ordered petitioner to bargain upon request with the Union. Pet. App. 29-34.

2. The court of appeals enforced the Board's bargaining order. Pet. App. 1-26. The court stated that this Court's decision in *Savair* and the Board's decision in *Deming* condemned the "linkage between the waiver of initiation fees and * * * pre-election commitment by employees to vote for the Union," or "linking a fee waiver for a particular employee to that employee's individual vote." *Id.* at 10. The court agreed with the Board that no such impermissible interference by the Union occurred here. The court observed that "the offer to waive initiation fees * * * was not conditioned on a pre-election commitment to support or vote for the Union" (*id.* at 9-10), and that "everyone qualified for the waiver if the Union won the election, even those who opposed the Union" (*id.* at 10). Further, the court observed, "in the event that the Union initially lost the

election, everyone would be subject to initiation fees if the Union won a subsequent election, even those who supported the Union." *Ibid.* Nor, in the court's view, was the waiver offer improper because it was tied to whether the Union won the scheduled election, since, "[b]y definition, an offer to waive initiation fees is related to a particular outcome or general 'vote' in a representation campaign, namely a union victory." *Id.* at 10 n.10.

The court also rejected petitioner's argument that it should have received an evidentiary hearing on its objection before the Board's certification of the Union. Applying the principle that pre-certification evidentiary hearings "are necessary only if there are substantial and material issues of fact relating to the validity of the election" (Pet. App. 18), the court held that the regional director and the Board correctly determined that no hearing was required (*id.* at 19). The court observed that the regional director and the Board had accepted employee affidavits submitted by petitioner as true, but nevertheless had concluded that the evidence did not warrant an evidentiary hearing. *Ibid.* The court concluded that petitioner simply disagreed with the interpretation or inferences placed on facts by the regional director, which was insufficient to warrant an evidentiary hearing. *Id.* at 22.

Circuit Judge Niemeyer dissented. Pet. App. 22-26. He concluded that the Union's offer to waive initiation fees was invalid under *Savair* as "an effort to purchase the employees' vote, since the offer was conditioned on a vote in favor of the Union." *Id.* at 23.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or another

court of appeals. Further review is therefore not warranted.

1. Petitioner contends (Pet. 7-14) that the decision below conflicts with *NLRB* v. *Savair Mfg. Co.*, 414 U.S. 270 (1973). In *Savair*, a union had, prior to a representation election, announced a selective waiver of its initiation fee only for employees who signed union recognition slips before the election. Employees who did not sign such slips would not get the benefit of the fee waiver, and some employees were under the impression that they would have to pay a "fine" if the union were certified but they had failed to sign the slips. *Id.* at 272-273. The Court held that the union's selective waiver of its initiation fee impermissibly interfered with employee free choice to vote for or against union representation in two ways. First, the union was able to "buy endorsements" and thus "paint a false portrait of employee support during its election campaign" by using this false showing of strength as a "campaign tool" in recruiting additional employee support. *Id.* at 277. Second, at least some employees might have felt obligated, when they subsequently voted in the election, to "carry through on their stated intention to support the union." *Id.* at 277-278.

The Court also recognized, however, that a union has a legitimate interest in waiving its initiation fee for new members, when the waiver is available "not only to those who have signed up with the union before an election but also to those who join after the election." 414 U.S. at 274 n.4. As the Court pointed out, employees may be reluctant to pay money to a union before the union shows that it can do anything for them; a waiver of initiation fees "remove[s] this artificial obstacle to [employees'] endorsement of the union." *Ibid.* "[A] union's promise of temporary waiver of dues for all potential union members

may serve to counteract an oft-used management argument that unions require workers to pay dues without guaranteeing the receipt of any tangible benefits." *NLRB* v. *Wabash Transformer Corp.*, 509 F.2d 647, 649 (8th Cir.), cert. denied, 423 U.S. 827 (1975).

Accordingly, since *Savair*, the Board and the courts of appeals have consistently held that offers to waive fees extended to all employees currently in the work force do not interfere with employee free choice in representation elections and therefore are not improper inducements under *Savair*. See *NLRB* v. *Whitney Museum of American Art*, 636 F.2d 19, 21 (2d Cir. 1980); *Molded Acoustical Prods., Inc.* v. *NLRB*, 815 F.2d 934, 937 (3d Cir.), cert. denied, 484 U.S. 925 (1987); *NLRB* v. *Hydrotherm, Inc.*, 824 F.2d 332, 336 (4th Cir. 1987); *Vicksburg Hospital, Inc.* v. *NLRB*, 653 F.2d 1070, 1076 (5th Cir. 1981); *NLRB* v. *First Union Management, Inc.*, 777 F.2d 330, 335 (6th Cir. 1985) (per curiam); *Warner Press, Inc.* v. *NLRB*, 525 F.2d 190, 196-197 (7th Cir. 1975), cert. denied, 424 U.S. 943 (1976); *NLRB* v. *Wabash Transformer Corp.*, 509 F.2d at 649-650; *NLRB* v. *Spring Road Corp.*, 577 F.2d 586, 589 (9th Cir. 1978); *Bokum Resources Corp.* v. *NLRB*, 655 F.2d 1021, 1024 (10th Cir. 1981). Petitioner does not take issue with these decisions and concedes that "[u]nions are allowed to waive initiation fees in order to remove a monetary barrier which might otherwise inhibit employee interest in representation." Pet. 10.

The Board and the court of appeals followed those principles in this case. As the court of appeals held (Pet. App. 18), substantial evidence supports the Board's conclusion that the Union's offer unambiguously conveyed that fees would be waived for all employees if the Union won the election, without regard to any employee's vote or pre-election support for the Union. The regional

director found that the business agent's alleged remarks "did not state either implicitly or explicitly that anyone would be required to pay initiation fees after the union won the election." App., *infra*, 5a. A leaflet mailed to employees by the Union before the election stated that "[t]here are no initiation fees" (*id.* at 4a), without distinguishing between employees who signed union cards before the election and those who signed afterwards, and assured employees that "[y]ou start paying dues only after we have shown what we can do for you." *Id.* at 4a-5a, 10a. Although petitioner contests the Board's conclusion that the fee waiver offer applied to all employees, that challenge raises only a factual issue not warranting review by this Court. See *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 491 (1951).

2. Petitioner argues (Pet. 12-13) that the waiver of fees was impermissibly tied to union support because the offer applied only if the Union won the certification election. A union's legitimate interest in waiving initiation fees recognized by this Court in *Savair* exists, however, even if the waiver applies only to the immediately upcoming certification election. The purpose of the waiver is to remove a barrier to employees' support of the union before the union can demonstrate that it has accomplished something for the employees in the bargaining unit. The union can negotiate benefits for those employees only if it wins the certification election. Thus, there is no reason for the union to waive initiation fees if it loses the election.[1]

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[1] Petitioner asserts (Pet. 10 n.3) that, had it conditioned a $100 employee benefit on the Union's defeat, its action would have been objectionable. Promises of benefits made by either an employer or a union, contingent on the outcome of an election, may, in certain circumstances, impermissibly interfere with free electoral choice.

As the court of appeals observed (Pet. App. 10 n.10), "[b]y definition, an offer to waive initiation fees is related to a particular outcome or general 'vote' in a representation campaign, namely a union victory." In stating that the waiver offer applied only if the Union won the election, the Union merely identified the only circumstance in which the question of a fee would be likely to arise, namely, if the employees selected the Union as their bargaining representative. The offer did not violate the principle of *Savair* because the Union made no link between waiving initiation fees, should the Union win the election, and either pre-election support or individual employees' votes in the election.[2]

See *Crestwood of Stockton*, 234 N.L.R.B. 1097 (1978) (union promise to hold $100 drawing if it won the election interfered with election); *Harvard Coated Prods. Co.*, 156 N.L.R.B. 162 (1965) (employer's promise to promote employee, conditioned on union's loss of election, objectionable). Such promises, however, are not comparable to an unconditional offer to waive a term of union membership such as the initiation fee. An across-the-board "change in terms and conditions of union membership, * * * although it may influence an employee toward joining the union, is nothing more than the removal by the union of a self-imposed barrier, which makes membership itself more attractive * * * [and] has at most a limited potential for influencing the employee's choice." *NLRB* v. *Whitney Museum of American Art*, 636 F.2d at 22.

[2] Contrary to petitioner's contention (Pet. 12-13), the decisions below do not ignore the Board's interpretation of *Savair* in *Deming Division, Crane Co.*, 225 N.L.R.B. 657 (1976). The Board and the court of appeals both found *Deming* to be distinguishable. See App., *infra*, 5a; Pet. App. 8-11. In *Deming*, the union offered a fee waiver for "anyone joining now during this campaign." The Board concluded that, because the "generally accepted connotation of a 'campaign' indicates that it ends with the election," the waiver offer was impermissible because it was not "unconnected with support for the union before the election, unrelated to a vote in the

Moreover, unlike the situation in *Savair*, employees in petitioner's bargaining unit would not have felt pressured to join the Union before the election, or to vote for the Union in the certification election, as a result of the fee waiver offer. In *Savair*, the pressure resulted from the fact that employees who joined late were subject to an initiation fee, and thus joining before the election was the only way to avoid that fee if the union won the election. Indeed, some employees were under the impression that they would be subject to a "fine" if they did not join the union before the election. 414 U.S. at 272-273. In this case, employees are not subject to the same pressure, because it is speculative whether the Union, if it had lost the certification election, would even have attempted to organize petitioner's employees again.[3] Because, in this case, the links in the chain were too tenuous to result in the kind of pressure that this Court found significant in *Savair*, the Board reasonably concluded that the Union's waiver offer did not interfere with employee free choice. No court has held that a waiver offer like the one made in this case is unlawful.

3. The Board and the court of appeals correctly rejected petitioner's contention that the Board should have held an evidentiary hearing concerning petitioner's

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election, * * * and without distinction between joining the union before or after the election." 225 N.L.R.B. at 659. Therefore, as the court below observed (Pet. App. 8-9), in *Deming*, as in *Savair*, employees had to pledge pre-election union support to benefit from the waiver. Here, the court, agreeing with the Board, found that the waiver offer was not contingent on pre-election support or individual employees' votes, but was available to all employees if the Union won the election.

[3] A second election could not be held within twelve months of a valid first election. See 29 U.S.C. 159(c)(3).

fee waiver objection. Under well-established Board rules, a party raising objections to an election is entitled to an evidentiary hearing only if it raises a substantial and material factual issue and proffers evidence that establishes a *prima facie* case for setting aside the election. See *NLRB* v. *Hydrotherm, Inc.*, 824 F.2d at 335; *NLRB* v. *Manufacturer's Packaging Co.*, 645 F.2d 223, 226 n.1 (4th Cir. 1981) (evidentiary hearing is not required when, "if all the facts supporting the position of the objecting party were credited, no ground is shown for setting aside the election").

Petitioner contends (Pet. 16) that it met its burden by submitting affidavits of three employees reporting the alleged initiation fee waiver offered by the Union's business agent. The regional director and the Board accepted the statements in those affidavits as true, but nevertheless determined that they did not establish grounds for setting aside the election. Even with those affidavits, the regional director found that the Union's waiver offer was not ambiguous, but "clearly stated that there would be no initiation fees without any distinction between those signing cards before or after the election." App., *infra*, 5a.[4] The Board also found that

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[4] This case is thus distinguishable from other cases cited by petitioner (Pet. 13 n.5), in which the Board or the courts concluded that a union's waiver offer was ambiguous as to whether it applied to all employees, without regard to their pre-election support for the union. In *Cataract, Inc.*, 274 N.L.R.B. 741 (1985), the union offered a fee waiver during the "organizational drive" and thus suggested that the offer might terminate after the election; the union also told employees that it could choose to raise the fee "at any time." The waiver offer at issue in *NLRB* v. *Aladdin Hotel Corp.*, 584 F.2d 891, 893 (9th Cir. 1978) (per curiam), similarly was limited to the "organizing campaign." *Playhouse Square Foundation* v. *NLRB*, 942 F.2d 369, 370-371 (6th Cir. 1991), and *NLRB*

petitioner had failed to make a *prima facie* case of objectionable election interference. Pet. App. 28 n.1. Petitioner neither disputes that the Board accepted its evidence as true, nor points to any disputed issue of material fact that would warrant an evidentiary hearing to resolve. Accordingly, petitioner presents no issue for review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 1994

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v. *Johnson & Hardin Co.*, 554 F.2d 275, 276 (6th Cir. 1977) (per curiam), also involved waiver offers that employees could easily have interpreted to apply only to those who joined the union before the election. The waiver offers in *The Coleman Co.*, 212 N.L.R.B. 927, 928 (1974), and *Inland Shoe Mfg. Co.*, 211 N.L.R.B. 724 (1974), were limited to "charter members," which could have been understood to refer only to early members, *i.e.*, those joining the union before the election. In *NLRB* v. *Stone & Thomas*, 502 F.2d 957, 959 (4th Cir. 1974), the record contained different versions of the waiver offer, including one that might have applied only to "assembled" workers. Because the court could not determine on the record whether the waiver offer was unlawfully selective, it remanded the case to the Board for further proceedings.

APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

Case No. 11-RC-5808

VSA, INC., d/b/a VSA CAROLINAS, Employer

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL UNION NO. 391, AFL-CIO, Petitioner

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CORRECTED REPORT ON OBJECTIONS

Pursuant to a Stipulated Election Agreement[1] approved on November 1,[2] a secret ballot election was held under the supervision of the Regional Director on November 22, with the following results:

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[1] The unit agreed to be appropriate is: All drivers employed in the transportation division of VSA, Inc., d/b/a VSA Carolinas, at its Greensboro, North Carolina facility; excluding office clerical employees, guards and supervisors as defined in the Act.

[2] All dates are 1991 unless otherwise specified.

Approximate number of eligible voters 19
Number of Void ballots 0
Number of Votes cast for Petitioner 11
Number of Votes cast against participating labor organization(s) 8
Number of Valid votes counted 19
Number of Challenged ballots 0
Number of Valid votes counted plus challenged ballots 19

Copies of the Tally of Ballots were made available to the parties.

On November 29, the Employer filed timely objections to conduct affecting the results of the election. A copy of the objections was duly served on the Petitioner.

The text of the Employer's objections is as follows:

(a) Union representatives conditioned a waiver of initiation fees upon a showing of pre-election support for the Union, thereby improperly inducing employees to vote for the Union.

(b) Union representatives, agents and adherents threatened employees, thereby creating an atmosphere of fear which inhibited free choice.

(c) Union representatives, agents or adherents physically struck a management official in the face with a wooden board.

By the acts described above and by other similar acts and conduct, the atmosphere in which the election was held was so contaminated as to render a free and uncoerced election impossible, and the employees were not able to vote under the conditions prescribed by the Board.

Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned, having carefully considered the information and evidence submitted, reports as follows:[3]

THE OBJECTIONS

Objection (a):

In this objection, the Employer asserts that union representatives conditioned a waiver of initiation fees upon a showing of pre-election support for the Union, thereby improperly inducing employees to vote for the Union.

The Employer presented two employee witnesses who stated that on a Saturday about mid to late September 1991, R. W. Brown, Business Agent for Teamsters Local 391, told employees at a union meeting that since employees were now first organizing and did not have a union established, the initiation fee would be waived for all employees; however, if employees rejected the union by a vote, there would be an initiation fee if there was a second attempt to organize.

A third employee witness submitted by the Employer stated that during a union meeting held on a Saturday in during late October or early November R. W. Brown stated that there would be no initiation fee this time; that if the Union was not voted in this time and another petition was filed a year and a day later, then there would be an initiation fee. Accord-

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[3] Only incidents which occurred between October 4, the date of the filing of the petition, and November 22, the date of the election, are considered herein. See *The Ideal Electric & Manufacturing Co.*, 134 NLRB 1275.

ing to this third witness, Brown clarified this comment by stating that if the Union was defeated or, if he withdrew this current petition, then the next time there would be an initiation fee. The witness thought that Brown said that the initiation fee would be $100.00.

The Employer also contends that the Petitioner, in furtherance of its attempt to "buy endorsements", threatened employees. Employer witnesses mentioned above stated that at the first Union meeting held in early to mid-September 1991, R. W. Brown told employees that by signing a union card, employees would have the protection of the Union if the company took action against them for coming to the meetings. One Employer employee witness stated that Brown told employees at this same meeting that the Union card was not a membership card, that it was to petition the Company for representation by the Union.

The Petitioner denies that it conditioned the waiver of initiation fees on employees voting for the Union during the current campaign or that any reference to initiation fees in future campaigns was made.

Union Business Agent Brown and two employee witnesses assert that on November 4, a leaflet was mailed to employees by the Union entitled "What You Should Know About the Teamsters Union."[4] This leaflet asks a question: "What about initiation fees and dues?" The answer, as set forth in the leaflet, states:

> There are no initiation fees. And you start paying dues only after negotiations and after a contract has been approved and ratified by you. You start

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[4] Attached as Petitioner Exhibit #1.

paying dues only after we have shown what we can do for you.

According to Petitioner Agent Brown and these two employee witnesses, the only mention of initiation fees at the meeting of November 9, was that there would be no initiation fees.

In *NLRB v. Savair Manufacturing Company*, 414 U.S. 270 (1973), the Supreme Court held that a union engages in objectionable conduct when it offers to waive initiation fees only for employees who signed union authorization cards before a representation election. In *Deming Division, Crane Co.*, 225 NLRB 657, 659 (1976), the Board noted that "a waiver is permissible only when it is unconnected with support for the union before the election, unrelated to a vote in the election and with support for the union before the election . . . and without distinction between joining the union before or after the election." Thus, objectionable conduct occurs when the Union waives initiation fees to those who joined before the election but not to those who sought to join the Union after the Union won the election.

The undersigned notes that according to the Employer's witnesses, alleged comments by Brown did not state either implicitly or explicitly that anyone would be required to pay initiation fees after the union won the election. It is further noted that Petitioner's Exhibit #1 which was mailed to all employees prior to the November 9 union meeting clearly stated that there would be no initiation fees without any distinction between those signing cards before or after the election. Thus, under these circumstances it does not appear that the Union has engaged in conduct proscribed by the *Savair* doctrine. In addition, the undersigned is of the opinion that the additional remarks allegedly made by

Brown in reference to securing the union's protection by signing a card is nothing more than a statement of support for employees who are active union supporters and thus is encompassed by Section 8(c) of the Act. Accordingly, it is recommended that Employer Objection (a) be overruled.

Objection (b) Part (1):

The Employer asserts in this objection that the Union representatives, agents or adherents threatened employees, thereby creating an atmosphere of fear which inhibited free choice.

In support of this objection, the Employer submitted an employee witness who initially stated that on November 22, the day of the election and just a few minutes before employees entered the plant to vote, a fellow employee who was with a group of employees just outside the polls preparing to enter to vote, commented that where he worked before, there was a union dispute where scabs had crossed the picket line and worked, and that he had put 9 bullet holes in a company truck. According to this witness, the employee did not say which company was involved or where or when the incident had occurred. In a supplemental affidavit, the witness recalled that the employees' comments about gun shots had nothing to do with his being involved in a previous union campaign but rather was the result of an argument between the employee and another owner-operator driver about 11 or 12 year ago. The witness also recalled that these same comments were made to drivers who had gathered at Shoney's Restaurant following the counting of the ballots and not outside the polling area before the election.

The subject employee was interviewed and he stated that he had been involved in previous union

campaigns with other employers in 1979 and 1988 but that there were no incidents of this nature during either of these campaigns. The employee admitted that he was at the plant on November 22 and voted. He recalled that while gathered with fellow employees at Shoney's Restaurant in Greensboro after the ballots had been counted, in a general conversation he related to other employees present that he became involved in an altercation with another truck driver about 12 years ago in Arkansas over a traffic ticket while talking with this driver over a CB radio which resulted in this driver and he exchanging gun shots. However, he stated that this was wholly unrelated to any union campaign or activities and there was no mention of this being in anyway union connected when he related the incident at Shoney's. He denied having stated at any time prior to the election that the incident related to a union campaign.

The undersigned concludes that as the above evidence reveals that the comments allegedly made by the employee occurred after the employees had cast their ballots and were not related, even according to the Employer's witness, to the union campaign, that they do not constitute objectionable conduct and, therefore should be overruled. Moreover, there is no evidence that the instant employee was an agent of the Petitioner or acting on its behalf. Also, even if the comments were made as initially alleged, I am not convinced that such comments interfered with the employees' right to an election free of intimidation and coercion.

Objection (b) Part (2):

This part of Objection (b) alleges that at a union meeting in early to mid-September, Petitioner Agent

R. W. Brown when asked by an employee present where a particular union official was, responded that the official had committed suicide, but the funniest thing was that he had been shot in the back of the head.

The undersigned notes that the issue raised by Objection (b) Part (2) predates the filing of the instant petition and thus, cannot be considered. Accordingly, it is recommended that such objection be overruled.

Objection (c) and other Acts and Conduct:

Since no evidence was provided in support of these objections, the undersigned recommends that they be overruled.

CONCLUSIONS AND RECOMMENDATIONS[5]

The undersigned has concluded that Employer's Objections (a), (b) Part (1), (b) Part (2) and (c), do not warrant setting the election aside and recommends

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[5] Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. Exceptions must be received by the Board in Washington by January 24, 1992.

Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits which a party has timely submitted to the Regional Director in support of its objections or challenges and which are not included in the report, are not part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.

that the objections be overruled and that a Certification of Representation issue.

Dated at Winston-Salem, North Carolina, this 10th day of January 1992.

/s/ *WILLIE L. CLARK, JR.*
Willie L. Clark, Jr.
Regional Director
National Labor Relations Board
Region 11
447 Federal Building
251 North Main Street
Winston-Salem, North Carolina 27101

(Petitioner's Exhibit 1)

WHAT YOU SHOULD KNOW ABOUT THE TEAMSTERS UNION

Q. *Why is the Teamsters Union trying to organize us?*

A. The Teamsters Union never tries to organize a group of employees unless the employees themselves express an interest in joining the Union. A number of you approached the Union and asked us to be your collective bargaining representative.

Q. *How would a Union become our collective bargaining representative?*

A. If at least 30% of you sign authorization cards, a petition can be filed with the Labor Board for a representation election. But a majority of those voting (50% + 1 vote) must vote for Union representation before a Union can become your collective bargaining representative.

Q. *Why should I be interested in the Teamsters Union?*

A. The Teamsters Union believes that all working people are entitled to decent wages which enable an adequate standard of living, job security, and dignity on the job. No employee should have to put up with unfair treatment or unsafe working conditions. The Teamsters Union does not tell your Employer how to run his organization, only how you, his employees, should be treated – with dignity and respect.

Q. *What about initiation fees and dues?*

A. There are no initiation fees. And you start paying dues only after negotiations and after a contract has been approved and ratified by YOU. You start paying dues only after we have shown what we can do for you.

~~A-26~~

– OVER –

[10a]

Q. *Isn't the Union interested only in getting our money?*

A. (1) Your employer pays a lawyer to look after his legal interests or an insurance company to protect the organization's assets. (2) Organizing employees and negotiating and administering a contract takes money. (3) You pay dues to defray the costs of representing you and guaranteeing your job security in a written contract. In return, you gain more in wages, benefits, and job security than the amount of dues you pay.

Q. *What about strikes?*

A. Contrary to what your Employer tells you, the Union cannot force you to go on strike. In fact, the Teamsters Union does not advocate strikes. More than 97% of all Teamster contracts are negotiated without a strike. Furthermore, it takes a majority vote by YOU employees before you can go on strike.

Q. *Why should I join the Teamsters Union?*

A. Alone, you do not have the strength to negotiate with your Employer in order to improve your wages and working conditions. But together, you gain the collective strength to make your Employer listen to your grievances and suggestions. With the Teamsters Union behind you, you gain strength at the negotiating table to put Employer promises in writing and make him live up to those promises.

Q. *What do I get out of the Teamsters Union?*

A. You gain experienced negotiators; expert representation to intercede on your behalf; economic aid; legal and research services; and the support of over 2 million Teamster members.

Q. *Who runs the Teamsters Union?*

A. YOU do! You have the vote that brings the Union in. You tell the Union the demands you want negotiated into your contract. You have the vote to ratify that contract. You have the vote that decides if you go out on strike. You have the vote that determines who you want as officers in your Local Union every three years.

SECURITY – STRENGTH – SUPPORT

IT'S THE TEAMSTER WAY

[TEAMSTERS LOCAL UNION NO. 391]

* *

THERE WILL BE A MEETING AT 6:00 P.M. ON SATURDAY, NOV. 9, 1991, AT TEAMSTERS LOCAL NO. 391 UNION HALL LOCATED OFF I-40 AT THE SANDY RIDGE ROAD EXIT BETWEEN GREENSBORO AND KERNERSVILLE, N. C.

VOTE FOR YOURSELF ! VOTE "YES" ON NOVEMBER 22, 1991 !

(We think everyone should have a water hose.)

~~A-21~~